



DEPARTMENT OF EDUCATION

[Docket ID ED-2020-OESE-0199]

Proposed Priority and Definition--Teacher and School Leader Incentive Program

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Proposed priority and definition.

SUMMARY: The Department of Education (Department) proposes to establish a priority and definition under the Teacher and School Leader Incentive Program (TSL), Assistance Listing Number 84.374A. We may use this priority and definition for competitions in fiscal year (FY) 2021 and later years. We propose a priority that clarifies the extent to which TSL-funded grant project activities are concentrated in High-Need Schools and a definition that clarifies what High-Need School means for the purposes of the TSL program.

DATES: We must receive your comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies,

please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about the proposed priority and definitions, address them to Orman Feres, U.S. Department of Education, 400 Maryland Avenue, SW, room 3C124, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Orman Feres, U.S. Department of Education, 400 Maryland Avenue, SW, room 3C124, Washington, DC 20202. Telephone: (202) 453-6921. Email: orman.feres@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and definition. To ensure that your comments have maximum effect in developing the notice of final priority and definition, we urge you to clearly identify the specific section of the proposed priority or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priority and definition. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of our programs.

During and after the comment period, you may inspect all public comments about the proposed priority and definition by accessing Regulations.gov. Due to the novel coronavirus 2019 (COVID-19) pandemic, the Department buildings are currently not open to the public. However, upon reopening you may also inspect the comments in person in room 3C124, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an

appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of TSL is to assist States, local educational agencies (LEAs), and nonprofit organizations to develop, implement, improve, or expand comprehensive performance-based compensation systems (PBCS) or human capital management systems (HCMS) for teachers, principals, and other school leaders (especially for teachers, principals, and other school leaders in High-Need Schools who raise student academic achievement and close the achievement gap between high- and low-performing students). In addition, a portion of TSL funds may be used to study the effectiveness, fairness, quality, consistency, and reliability of PBCS or HCMS for teachers, principals, and other school leaders (educators).

Program Authority: Section 2211-2213 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 6631-6633.

Background: In making TSL awards, the Secretary is required to give priority to applicants that concentrate activities on teachers, principals, or other school leaders

serving in high-need schools. The most recent FY 2020 TSL competition (85 FR 18928, April 3, 2020) highlighted the need for a definition and priority that would help better target the program to educators and students in High-Need Schools.¹ Additionally, since passage of the Every Student Succeeds Act in 2015, the Department could not implement the TSL program statutory definition of High-Need School because that definition requires data that are unavailable. Therefore, we propose to establish a definition of High-Need School using Free and Reduced-Price Lunch (FRPL) data and a separate priority to require submission of data to demonstrate that the TSL project is concentrated in High-Need Schools.

Proposed Definition: ESEA section 2211(b)(2) defines High-Need Schools for the purposes of the TSL program as a school “located in an area in which the percentage of students from families with incomes below the poverty line is 30 percent or more.” The definition of poverty line in ESEA section 8101(41) requires the Department to use poverty line data gathered by the U.S. Census Bureau. However, the Department has determined that the school-level poverty-line data required by the definition of High-Need School in section 2211(b)(2) of the ESEA are unavailable; the U.S. Census Bureau reports these data only

¹ The term that we propose to define is capitalized throughout this document.

by LEA (school district). As such, to ensure that awards made under the TSL program still target the schools with high proportions of students from low-income families, rather than schools that are part of a broader LEA with high proportions of students from low-income families, the Department proposes to define High-Need School by using, in part, a similar poverty measure used for the FY 2010, 2012, and 2016 Teacher Incentive Fund (TSL's predecessor program) competitions and the 2017 and 2020 TSL competitions. In these prior competitions, a High-Need School was defined as "a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use consistent with ESEA section 1113(a)(5) (20 U.S.C. 6313(a)(5))." The definition proposed here would be substantially similar, but also include information about how the Community Eligibility Provision (CEP) of the Richard B. Russell National School Lunch Act could be used to meet the definition.

Proposed Priority: Additionally, we propose one priority to clarify the requirements for demonstrating in an application that a project is concentrated on educators serving in High-Need Schools. This priority would clarify how future TSL applicants must demonstrate in their applications that proposed TSL-funded activities primarily

target educators in High-Need Schools. The FY 2020 TSL competition drew one of its two absolute priorities directly from the program's statute, requiring eligible applicants to concentrate the proposed activities on teachers, principals, or other school leaders serving in High-Need Schools. The priority did not explain in detail what level of focus an applicant must demonstrate to show that TSL activities would "concentrate" on educators in High-Need Schools. Some applicants proposed to serve all High-Need Schools. Other applicants did not distinguish which activities were for all participating schools and which activities were only for High-Need Schools. Further, the priority lacked clarity on what factors the Department considers when determining whether a school is High-Need. This lack of specificity led to numerous instances where documentation of High-Need School status was insufficient. Additionally, the lack of a consistent standard for a concentration on High-Need Schools limited the Department's ability to determine whether applicants had met the High-Need Schools absolute priority. It further resulted in several proposed projects being reviewed that did not appear to address the goal of focusing work primarily on High-Need Schools. Thus, we propose language that clarifies that concentrating the proposed activities means that at least the majority of schools intended to participate in TSL-funded project activities must be High-

Need Schools. In the proposed priority, we further specify that applicants must provide evidence to document the High-Need status of the schools included in the proposed TSL-assisted project. The proposed definition and priority would be used only in future TSL competitions and would not impact current TSL grantees or change priorities from the FY 2020 or other prior competitions.

PROPOSED PRIORITY: The Department is proposing the following priority.

High-Need Schools.

Under this priority, eligible applicants must concentrate the activities proposed to be assisted under the grant on teachers, principals, or other school leaders serving in High-Need Schools.

In order to demonstrate that the TSL project is concentrated in High-Need Schools, the applicant must:

(a) Provide the requested data in paragraph (c) below to demonstrate that at least the majority of the schools participating in the proposed project are High-Need Schools and describe how the TSL-assisted grant activities are focused in those schools;

(b) Include a list of all schools in which the proposed TSL-funded project would be implemented and indicate which schools are High-Need Schools; and

(c) Provide the most recently available school-level data supporting each school's designation as a High-Need School.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Definition:

We propose the following definition for this program.

We may apply this definition in any year in which the program is in effect.

High-Need School means a school with 50 percent or more of its enrollment from low-income families as calculated using—

(a) The number of children eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) (or, if an LEA does not participate in the NSLP, comparable data from another source such as a survey);

(b) If an LEA has one or more schools that participate in the Community Eligibility Provision (CEP) of the NSLP, for any of its schools (i.e., CEP and non-CEP schools), the method in paragraph (a) of this definition or an alternative method approved by the Department; and

(c) For middle and high schools, data from feeder schools that can establish that the middle or high school is a High-Need School under paragraph (a) or (b) of this definition.

Final Priority and Definition:

We will announce the final priority and definition in a document published in the *Federal Register*. We will determine the final priority and definition after considering responses to the proposed priority and definition and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions,

or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use the priority and definitions, we invite applications through a notice inviting applications in the *Federal Register*.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the

rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing the proposed priority and definition only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed priority and definitions are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal

governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Potential Costs and Benefits

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priority and definition would not impose any particular burden except when an entity voluntarily elects to apply for a grant. The benefits of the proposed priority and definition would outweigh any associated costs because they would help ensure that the Department's TSL grant program selects high-quality applicants to implement activities that are designed to address High-Need Schools.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority and definition easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make the proposed priority and definition easier to understand, see the instructions in the ADDRESSES section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened

federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are school districts, nonprofit organizations, and for-profit organizations. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that the proposed priority and

definition would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed priority and definition contain an information collection requirement. Under the PRA the Department has submitted this priority and definition to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of

law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the notice of final priority we will display the control number assigned by OMB to any information collection requirement proposed in this document and adopted in the notice of final priority.

An FY 2021 competition would require applicants to complete and submit an application for Federal assistance using ED standard application forms. As a part of the application submission, respondents, who are LEAs, State educational agencies, the Bureau of Indian Education, nonprofit or for-profit organizations, or a combination thereof, will submit information demonstrating that each school included in the TSL-assisted project is a High-Need school. We estimate that for the FY 2021 TSL competition and later competitions, each applicant would spend approximately 87 hours of staff time to address the proposed priority and definition. Based on the number of applications the Department received in the FY 2020 TSL competition, we expect to receive approximately 100 applications for these funds. The total number of hours for all expected applicants to address this priority and definition is an estimated 8,700 hours.

Around the same time that this notice is published,

the Department will submit a copy of the TSL discretionary grant application using the proposed priority and definition and application to OMB for its review, which will provide the burden hours associated with each proposed regulatory requirement.

We must receive your comments on the collection of information contained in this proposed priority and definition on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], even if comments on the rest of these proposed priority and definition are due later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. OMB is required to make a decision concerning the collection of information contained in this proposed priority and definition between 30 and 60 days after publication of this document in the *Federal Register*. Comments related to the information collection requirements for this proposed priority and definition must be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov by selecting Docket ID number ED-2020-OESE-0199 or via postal mail, commercial delivery, or hand delivery by referencing the Docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department

of Education, 400 Maryland Ave, SW, LBJ, Room 6W208D,
Washington, DC 20202-8240.

Note: The Office of Information and Regulatory Affairs in
OMB and the Department review all comments related to the
information collections requirements posted at
www.regulations.gov.

We consider your comments on this proposed collection
of information in--

- Deciding whether the proposed collection is
necessary for the proper performance of our functions,
including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the
burden of the proposed collection, including the validity
of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of
the information we collect; and
- Minimizing the burden on those who must respond.
This includes exploring the use of appropriate automated,
electronic, mechanical, or other technological collection
techniques.

Accessible Format: On request to the program contact
person listed under FOR FURTHER INFORMATION CONTACT,
individuals with disabilities can obtain this document and
a copy of the application package in an accessible format.
The Department will provide the requestor with an
accessible format that may include Rich Text Format (RTF)

or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of the Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ruth Ryder,

Deputy Assistant Secretary for

Policy and Programs,

Office of Elementary and Secondary Education.

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